



LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
JUSTICE SYSTEM INTEGRITY DIVISION

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April 29, 2005

Captain Raymond Peavy
Homicide Bureau
Los Angeles County Sheriff's Department
5747 Rickenbacker Road
Commerce, California 90040

RE: J.S.I.D. File No. 04-0754
L.A.S.D. File No. 404-14744-2811-057

Dear Captain Peavy:

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the September 12, 2004, non-fatal shooting of Salvador Montoya by Los Angeles County Sheriff's Deputy Anthony Forlano. The weight of the evidence shows that Deputy Forlano acted lawfully in self-defense and in the defense of others.

The following analysis is based upon reports prepared by the Los Angeles County Sheriff's Department submitted to this office by Detectives George Martinez and Jose Romero on January 11, 2005. Additionally, the District Attorney Command Center was notified of the shooting at approximately 4:44 a.m. on September 12, 2004. The District Attorney Response Team, comprised of Deputy District Attorney Edward Miller and District Attorney Senior Investigator Gilbert Roldan, responded to the scene. We were given a briefing of the circumstances surrounding the shooting and a "walk-through" of the scene. Compelled statements were not considered as part of this analysis.

FACTUAL ANALYSIS

On September 12, 2004, at approximately 3:48 a.m., Deputy Jose Racho was responding to a call, driving eastbound on Compton Boulevard approaching the intersection of Maie Avenue, in the City of Compton. Racho saw Salvador Montoya walking eastbound on the double painted yellow traffic lines in the center of the road. After passing Maie

Avenue, Racho slowed his patrol car as he approached Montoya. As Racho got closer, Montoya suddenly ran in front of the patrol car to the south sidewalk where he continued walking eastbound.

Deputy Racho pulled next to Montoya and ordered him to stop three times. Montoya did not obey. Racho believed Montoya might have a weapon because he was obviously trying to avoid contact, was wearing loose fitting clothing and had his back to Racho. After Montoya disregarded the third order to stop, Racho pulled his gun from his holster and pointed it directly at Montoya. Montoya, however, continued walking eastbound, then suddenly turned around and began walking westbound.

Deputy Racho stopped and began driving in reverse, keeping his gun trained on Montoya. Racho made eye contact with Montoya as he did so. Racho ordered Montoya to stop several times, but Montoya did not comply. At one point, Montoya asked something to the effect of, "What? Are you going to shoot me?" Racho ordered Montoya to stop two additional times, to no avail.

Again, Montoya suddenly turned around and began walking eastbound. As he walked away, Montoya reached into his waistband area. Montoya again turned around and ran westbound, still with his hands in his waistband area. Deputy Racho followed, again driving in reverse. Montoya ran north across Compton Boulevard, then northbound on Maie Avenue out of view.

Deputy Racho contacted Deputy Anthony Forlano by radio. Forlano met with him and they briefly searched the area on foot without success. The deputies decided to leave the area.

Deputy Racho subsequently contacted a group of individuals standing in front of a residence located nearby at 1215 Magnolia Street, to determine if they knew Montoya. These individuals, along with Montoya, had been attending a baptismal party at the residence, which is located at the intersection of Maie Avenue.

In the meantime, Deputy Forlano decided to return because he had not seen Deputy Racho's patrol car leave the area of their search. As Forlano drove westbound on Compton Boulevard, he saw Montoya jump over a fence onto the street. Montoya ran westbound down the north sidewalk of Compton Boulevard, then turned northbound onto Maie Avenue, out of view. Forlano sped up and followed Montoya.

As Deputy Racho was talking to Montoya's girlfriend, he saw Montoya running in his direction followed by Deputy Forlano. Racho began walking toward Montoya to detain him. Montoya stopped on the front lawn of a residence directly across the street. Racho grabbed Montoya's right shoulder. Montoya grabbed him and they began to struggle, eventually falling to the ground. Racho initially landed on Montoya, but Montoya overpowered him and got on top. Racho tried to grab Montoya's hands to restrain him, but was unable to. Deputy Forlano got out of his patrol car and went to assist Racho.

During the struggle, Deputy Racho felt a tug at his holster. He immediately reached for his holster with his right hand and felt Montoya's hand on his gun. Racho told investigators that he yelled out something to the effect of, "he has my gun" or "he is holding onto my gun."

Deputy Forlano told investigators that as he approached, Deputy Racho yelled, "He has my gun." Forlano was afraid that Montoya had Racho's gun and was going to kill Racho and him. Forlano placed his gun next to Montoya's stomach and ordered him to stop, but Montoya refused to obey. Forlano then shot Montoya once on the side of the torso. Forlano believed his gun was within five inches of Montoya's torso when he fired. Forlano stated that he could not see if Montoya actually had Racho's gun because it was dark and he had approached him from behind.

Montoya stopped fighting. Deputy Racho pushed him off and handcuffed him. Racho's gun remained in his holster during the struggle.

Paramedics were called and Montoya was transported to Martin Luther King Hospital. He sustained a gunshot wound to the abdomen.

On top of Montoya's clothing, which was removed by paramedics and left at the scene of the struggle, investigators found a small plastic bag containing what appeared to be marijuana.

Montoya subsequently told investigators that he was attending a baptismal party at his girlfriend's uncle's house. At some point he became bored and wanted to go home. His girlfriend, however, did not want to go. This made Montoya angry, so he decided to leave. Montoya said he refused to stop for the deputy because he was upset and did not feel that the officer had a reason to stop him. He then ran back to the house where the party was held. As he reached the location, his girlfriend told him not to run because the police were after him. Montoya told her that he had not done anything wrong.

Montoya stated that when the deputies arrived, they knocked him to the ground. Montoya then heard a gunshot and he yelled at the deputies to get off of him because he was in pain. He said one of the deputies then pointed his gun at his family members. Montoya then passed out.

Montoya said that he drank about six to seven beers at the party and possibly more. Montoya denied that he hid from the deputies. Montoya also denied struggling with Deputy Racho and stated that he did not try to take his gun. He further denied that the bag of apparent marijuana found on his clothing belonged to him.

Xochitl Vasquez is Montoya's girlfriend. They live together and have three children. Vasquez made two statements to investigators. Her first statement was taken by Deputy Joseph Sumner, who contacted her in front of her uncle's house. Vasquez stated she was at a party at her uncle's house and that Montoya had been drinking all day long. When Montoya told her that he wanted to go home, she refused and told him she wanted to

spend the night at her uncle's because Montoya was drunk and unable to drive. Montoya became argumentative and insisted he was going to drive home. Another family member took Montoya's keys from him so he would not be able to drive. Montoya became angry. He walked out of the house and said he was going to walk home to Santa Ana. Vasquez said that a few seconds later, Montoya returned running back on Maie Avenue. Two deputies followed Montoya and caught up with him. Montoya began to struggle with the deputies. A few seconds later, she heard a gunshot and saw that one of the deputies had fired his gun.

Deputy Sumner concluded his interview because Vasquez was no longer able to clearly speak due to being emotionally upset. Deputy Sumner reported that several other persons standing in front of the location began to coach Vasquez as to what to say.

In a subsequent interview with investigators, Vasquez said that she saw Montoya running from the deputy about five minutes after he left. She told Montoya, "Don't run. Don't run. Let him get you." One of the deputies caught Montoya and grabbed him by the arm. Montoya began struggling with the deputy. The second deputy arrived and grabbed Montoya by the other arm. The deputies put Montoya on the ground and put his hands behind his back in order to handcuff him. Montoya, however, continued to struggle. The second deputy then pulled out his gun and hit Montoya twice in the back with it, but Montoya continued to struggle. The second deputy then put the gun to Montoya's side and shot him. The same deputy then pointed the gun at her and told her to get back.

The remaining witnesses to the shooting, all of whom were attending the party and three of whom are relatives of Xochitl Vasquez, agreed that Montoya was drunk and resisted arrest. Two of these witnesses saw Montoya hiding from the deputies in some bushes prior to his arrest.

Sarah Ann Wilson, who is not related to Vasquez or Montoya, stated that the first deputy grabbed Montoya from behind and Montoya began struggling with him. She heard Montoya's girlfriend yelling at him to comply with the deputies. Wilson said that as Montoya continued to struggle, the second deputy began hitting him. Montoya got down on his knees and continued struggling with the deputies. Wilson said that she saw the second deputy get down on his knees and point his gun at Montoya as the other deputy was trying to hold Montoya down. She then heard a gunshot and turned away.

Abraham Vasquez stated that the first deputy grabbed Montoya from the front of his body and held him by both of his arms. Montoya began struggling. The second deputy arrived to assist and both deputies and Montoya fell to the ground. Montoya was laying face down and continued to struggle. The second deputy struck Montoya three times in the back with a gun, then pointed the gun to the left side of Montoya's back and fired. Vasquez said he did not hear the deputies say anything to Montoya because everything happened so fast. He never saw Montoya reach for or grab the deputy's gun. Vasquez said he was standing six to eight feet away from the struggle.

Abraham Vasquez, Jr. said that the first deputy grabbed Montoya from behind and was trying to throw Montoya to the ground, but was unable to do so. The second deputy arrived and assisted in getting Montoya on the ground, but Montoya continued to struggle. The second deputy then struck Montoya in the back with his gun. Montoya's girlfriend ran toward the deputies, but the second deputy turned and pointed his gun at her and told her to get back. The second deputy then pointed his gun at Montoya and shot him once in the right side of the stomach.

Maria Vasquez told investigators that the second deputy struck Montoya two or three times in the back with his gun, before he shot Montoya.

CONCLUSION

California law permits the use of deadly force in self-defense or in the defense of others if it reasonably appears that the person claiming the right of self-defense or the defense of others actually and reasonably believed that he or others were in imminent danger of great bodily injury or death. People v. Williams, (1977) 75 Cal.App. 3d 731.

In protecting himself or another, a person may use all force which he believes reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent. California Jury Instructions—Criminal 5.30, 5.32.

When the peril is swift and imminent and the necessity for action immediate, the law does not weigh into nice scales the conduct of the assailed and say he shall not be justified in killing because he might have resorted to other means to secure his safety. People v. Collins, (1961) 189 Cal. App. 2d 575.

In this case, Deputy Forlano was justified in his use of deadly force. Initially, Forlano's fellow deputy merely sought to detain Montoya to determine why he was walking down the middle of Compton Boulevard in the middle of the night and then suddenly ran in front of his patrol car. Montoya, drunk and already angry following an argument with his girlfriend, ignored Deputy Racho's directions to stop, became belligerent and ran. Besides facing a possible arrest for public intoxication, Montoya may have been motivated by a desire to avoid a citation for being in possession of marijuana. Montoya subsequently attacked Deputy Racho when he tried to detain him, then grabbed at Racho's gun. On hearing Deputy Racho yell out, "He has my gun" after he was overpowered by Montoya, Deputy Forlano was reasonable in concluding that he and his fellow deputy were in imminent mortal danger. Deputy Forlano's subsequent resort to deadly force was thus reasonable.

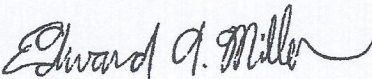
We are mindful that some of the accounts given by civilian witnesses differ somewhat from the reports given by the deputies, particularly as to whether Deputy Forlano hit Montoya with his gun. Some differences in perception, of course, are to be expected given the effect of darkness on the witnesses' ability to see, combined with the difficulty

inherent in articulating the details of a struggle involving three individuals. Nevertheless, we do not accord much weight to the statements that Deputy Forlano hit Montoya with his gun for the following reasons: (1) Montoya did not mention this in his statement to investigators; (2) Montoya's girlfriend did not mention this in her initial statement to Deputy Sumner, but only in a subsequent statement, after apparently being coached by other witnesses; (3) Sarah Ann Wilson, the only civilian witness to the incident not related to Montoya's girlfriend, did not see Deputy Forlano hit Montoya with his gun.

The weight of the evidence reflects that Deputy Forlano acted reasonably and lawfully in self-defense and in defense of others when he used deadly force against Salvador Montoya. We are therefore closing our file and will take no further action in this matter.

Very truly yours,

STEVE COOLEY
District Attorney

By 

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c: Deputy Anthony Forlano #432017
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